

## Department of Justice

## § 17.46

they may no longer meet the standards for access.

### § 17.44 Access eligibility.

(a) Determinations of eligibility for access to classified information are separate from suitability determinations with respect to the hiring or retention of persons for employment by the Department or any other personnel actions.

(b) The number of employees eligible for access to classified information shall be kept to the minimum required for the conduct of Department functions.

(c) Eligibility for access to classified information shall be limited to classification levels for which there is a need for access. No person shall be granted eligibility higher than his or her need.

### § 17.45 Need-to-know.

No person shall be granted access to specific classified information unless that person has an actual need-to-know that classified information, pursuant to section 2.5 of Executive Order 12968.

### § 17.46 Access by persons outside the Executive Branch.

(a) Classified information shall not be disseminated outside the Executive Branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the Executive Branch.

(b) Classified information originated by or in the custody of the Department may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Federal Government will derive a benefit or advantage and that the release is not prohibited by the originating department or agency (or foreign government in the case of Foreign Government Information). Before such a release is made, the head of the Office, Board, Division, or Bureau making the release shall determine the propriety of such action, in the interest of the national security, and must approve the release. Prior to the release, the Department Security Officer must confirm that the recipient is eligible for access to the classified information involved and agrees to

safeguard the information in accordance with the provisions of this part.

(c) Members of Congress, Justices of the United States Supreme Court, and Judges of the United States Courts of Appeal and District Courts do not require a determination of their eligibility for access to classified information by the Department. Federal Magistrate Judges must be determined eligible for access to classified information by the Department Security Officer pursuant to procedures approved by the Assistant Attorney General for Administration in consultation with the Judicial Conference of the United States. All other Legislative and Judicial personnel including, but not limited to, congressional staff, court reporters, typists, secretaries, law clerks, and translators who require access to classified information must be determined eligible by the Department Security Officer consistent with standards established in this regulation.

(d) When other persons outside the Executive Branch who are not subject to the National Industrial Security Program require access to classified information originated by or in the custody of the Department, but do not otherwise possess a proper access authorization, an appropriate background investigation must be completed to allow the Department Security Officer to determine their eligibility for access to classified information. The length of time it generally takes to complete an expedited background investigation is 90 days. Therefore, all persons requiring access to classified information to participate in congressional or judicial proceedings should be identified and the background investigation initiated far enough in advance to ensure a minimum impact on such proceedings.

(e) Personnel who are subject to a Department contract or grant or who are rendering consultant services to the Department and require access to classified information originated by or in the custody of the Department shall be processed for such access pursuant to procedures approved by the Assistant Attorney General for Administration.

(f)(1) The requirement that access to classified information may be granted